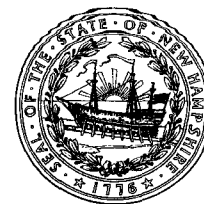




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Charles Kelley
P.O. Box 364
Hillsborough, NH 03244

Re: Bridge Street
Wetlands Bureau File # 2006-1315

ADMINISTRATIVE ORDER
No. WD 06-029

July 7, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Charles Kelley pursuant to RSA 482-A. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Charles Kelley is an individual having a mailing address of P.O. Box 364 Hillsborough, NH 03244.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Charles Kelley is the owner of land located on Bridge Street more particularly described on the Hillsborough Tax Map 26 as Lot 90 ("the Property").
5. On May 23, 2006, DES received a complaint from the Town of Hillsborough alleging that fill had been placed in wetlands on property owned by Charles Kelley and located on Bridge Street.

6. On May 23, 2006, DES personnel conducted a site inspection and observed that approximately 8,000 square feet of recent fill material had been placed in jurisdictional wetlands on the Property.

7. On June 9, 2006, DES personnel spoke with Mr. Kelley by telephone. Mr. Kelley refused to stop having fill material brought to his site and refused to meet with DES personnel. Mr. Kelley stated that he would continue to have the fill material brought in because he needed to make a living and he would not hire a Certified Wetland Scientist.

D. DETERMINATION OF VIOLATIONS

1. Charles Kelley has violated RSA 482-A:3, I, by filling approximately 8,000 square feet of wetland without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Charles Kelley as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.

2. **Within 20 days of the date of this Order**, retain a certified wetland scientist to develop restoration plans in accordance with Item E.3 below, supervise the implementation of the restoration in accordance with Item E.3 below, and to submit restoration progress reports.

3. **Within 45 days of the date of this Order**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist and stamped by a licensed surveyor, and include provisions for removal of the wetland fill and restoration of the wetland impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions, with wetland boundaries; and
 - ii. Proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) to be installed prior to the start of restoration activities;
- c. A detailed description of the method to be used for removal of the fill;
- d. A detailed description of the type and quantity of wetland seed mix for the stabilization of the ditch and a proposed planting plan including shrubs and trees species for the vegetation of the restoration area; and
- e. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.

- f. A monitoring schedule, including submittal of two restoration monitoring reports to be completed at the end of each growing season, prepared by a Certified Wetland Scientist and submitted to the DES Wetlands Bureau. The restoration reports shall document restoration, including survival rate of the plantings in the restoration area and stabilization of the site.
4. Implement the restoration plan proposed in accordance with Item E.3 above only after receiving written approval, and as conditioned, by DES. All restoration actions shall be completed **within 60 days of the date of this Order**.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: dbuker@des.state.nh.us

F. APPEAL

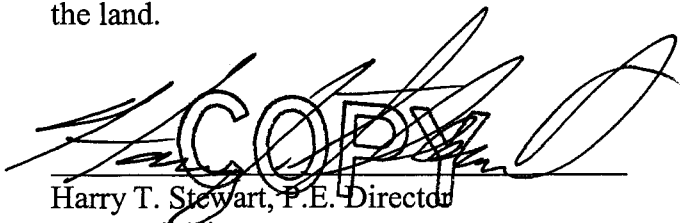
Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

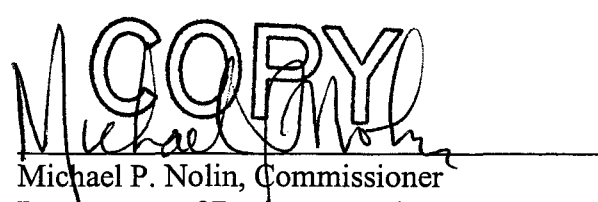
Filing an appeal or motion for reconsideration does not relieve Charles Kelley of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Charles Kelley's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E. Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7006 0100 0005 8153 5306

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Hillsborough Conservation Commission and Board of Selectmen
Dawn Buker, DES Wetlands Bureau